

United States Senate

WASHINGTON, DC 20510

April 9, 2014

The Honorable Jack Reed
Chairman
Subcommittee on Interior, Environment
and Related Agencies
Senate Appropriations Committee
Senate Dirksen Building, 131
Washington, DC 20510

The Honorable Lisa Murkowski
Ranking Member
Subcommittee on Interior, Environment
and Related Agencies
Senate Appropriations Committee
Senate Hart Building, 125
Washington, DC 20510

Dear Chairman Reed and Ranking Member Murkowski:

As the subcommittee begins its consideration of a Fiscal Year 2015 appropriation bill for the agencies within the jurisdiction of the Subcommittee on Interior, Environment and Related Agencies, I respectfully request support for the programs listed below. The funding requested for the national programs is to be spent at the agencies' discretion within the existing budget line and is not intended for any specific business, state, community or other entity.

1. Title: Fulfillment of Tribal Trust Responsibilities for Environmental Impact Statement Record of Decisions Impacting Health and Wellness of Indian Tribes
Bill Language Requested (*Draft Language Attached*): To require a Supplemental Environmental Impact Statement to incorporate additional findings through fulfillment of U.S. tribal trust responsibilities and re-issuance of the Record of Decision and public interest determination within 6 months after the date of enactment of the act.

Rationale: Section 6401 of the *2009 Omnibus Public Lands Act* authorized a land exchange to facilitate construction of a road in King Cove, Alaska, pending completion of an Environmental Impact Statement (EIS) and a public interest determination by the Secretary of Interior. The Record of Decision was issued in December 2013. In February 2014 the Secretary of Interior determined the land swap was not in the public interest. However, tribal trust responsibilities of the U.S. government were not incorporated into the scope of the original EIS, which was the single most influencing factor in the Secretary's public interest determination. In fact, on January 29, 2014, in a hearing before the Senate Committee on Indian Affairs, the Assistant Secretary of Indian Affairs Kevin Washburn acknowledged trust responsibility is defined by Congress and that Section 6401 of the *2009 Omnibus Public Lands Act* provided no guidance with respect to fulfillment of tribal trust responsibilities. In that same hearing Assistant Secretary Washburn acknowledged the U.S. government must abide by its trust responsibilities as defined by Congress. The requested language will ensure tribal trust responsibilities pertaining to the road in King Cove are fulfilled.

2. Title: U.S. Forest Service - Region 10 Timber Cedar

Bill Language Requested: Region 10 Timber Cedar: No timber sale in Alaska's Region 10 shall be advertised if the indicated rate is deficit (defined as the value of the timber is not sufficient to cover all logging and stumpage costs and provide a normal profit and risk allowance under the Forest Service's appraisal process) when appraised using a residual value appraisal. The western red cedar timber from those sales, which is surplus to the needs of the domestic processors in Alaska, shall be made available to domestic processors in the contiguous 48 United States at prevailing domestic prices. All additional western red cedar volume not sold to Alaska or contiguous 48 United States domestic processors may be exported to foreign markets at the election of the timber sale holder. All Alaska yellow cedar may be sold at prevailing export prices at the election of the timber sale holder.

Rationale: This longstanding appropriations language ensures the U.S. Forest Service timber sales in the Alaska Region will be profitable for purchasers. The cedar export provisions make cedar logs available to domestic purchasers when there is interest, otherwise it allows round log export sales as an important component of timber sale profitability. Reject the Administration's request the language be deleted.

3. Title: Management of National Forest Lands for Subsistence Uses

Program Description: The Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101) provides rural Alaskan residents a subsistence priority to harvest fish and wildlife on Federal lands over sport and commercial uses. ANILCA authorizes the Secretary of Agriculture to issue regulations relevant to the taking of fish and wildlife on public lands in the State of Alaska. The ANILCA envisioned that the State of Alaska would manage for this rural priority, as was the case for 10 years. However, the statute was found to conflict with the Alaska State Constitution, which prohibits granting subsistence priority to only rural residents. As a result, the Federal government assumed responsibility for subsistence management on Federal public lands in 1990 and expanded its responsibility to Federally-reserved navigable waters in Alaska in 1999.

Fiscal Year 2015 President's Budget Request: \$2.438 million.

Additional Amount Requested: +\$2.6 million.

Rationale: Additional funds will support USFS's obligation to manage Federal lands in Alaska for Subsistence uses under title VIII of the Alaska National Interest Lands Conservation Act (Public Law 96-487). President's request is \$2 million short of the Fiscal Year 2014 enacted level and half of what was provided for the program in prior fiscal years.

Bill Language Requested: For necessary expenses of the Forest Service to manage Federal lands in Alaska for subsistence uses under title VIII of the Alaska National Interest Lands Conservation Act (Public Law 96-487), \$5,000,000 to remain available until expended.

Budget Account: Department of Agriculture, Forest Service, Management of National Forest Lands for Subsistence Uses. Request reject the Administration's proposal to eliminate a separate funding line and carry out responsibilities through other National Forest System funds to ensure the program remains a priority, and responsibilities under ANILCA fulfilled, as well as provide for continued congressional oversight and transparency of funds. The trend of underfunding this program reflects the need for Congress to speak on its importance by maintaining a separate funding line.

4. Title: Alaska Land Conveyance Program

Program Description: The Alaska Conveyance and Lands Program transfers land title from the Federal government to individual Alaska Natives, Alaska Native Corporations, and the State of Alaska pursuant to the *1906 Native Allotment Act*, the *Alaska Native Veterans Allotment Act of 1998*, the *Alaska Native Claims Settlement Act of 1971* (ANCSA) and the *Alaska Statehood Act of 1959* (Statehood Act). Conveyance work has been ongoing since the 1960s.

Fiscal Year 2015 President's Budget Request: \$19 million. I support the President's Budget Request and would be in favor of additional funds to support the acceleration of land conveyances. The President's Budget request is approximately \$3 million less than the Fiscal Year 2014 amount enacted. There is an estimated \$280 million backlog in work to complete conveyance of lands owed to individual Alaskans, Alaska Native Corporations and the State of Alaska. The program needs strong and predictable funding to sustain progress to meet program goals and comply with law.

Report Language Requested: The Committee recognizes contaminated lands were conveyed to Alaska Native Corporations (ANCs), through the Alaska Native Claims Settlement Act (ANCSA). Section 326 of Public Law 101-512 required the Secretary of the Interior to report to Congress on contaminated lands conveyed through ANCSA. Section 103 of Public Law 104-42 required the Secretary of the Interior to provide a more detailed report on contaminants on lands prior to conveyance to ANCs. In December 1998, the Department of the Interior submitted a report to Congress in which it acknowledged conveying approximately 650 contaminated sites on lands conveyed through ANCSA. The Committee requests a detailed report be provided to it within 180 days, which includes the following information: (1) a comprehensive inventory of contaminated sites conveyed through ANCSA, including sites identified subsequent to the 1998 report; (2) an updated status on the six recommendations listed in the 1998 report; and (3) a detailed plan from DOI on how the agency intends to complete the cleanup of each contaminated site.

Rationale: Report language will increase awareness and oversight of contaminated lands conveyed through the program and promote implementation of measures to manage and clean up the land.

Budget Account: Department of Interior, Bureau of Land Management, Realty and Ownership Management, Alaska Conveyance and Lands

5. Title: Roadless Rule

Bill Language Requested: The Roadless Area Conservation Rule Sections 294.10 through 294.18 of Title 26, Code of Federal Regulations, published at 66 Fed Reg. 3244-3273 do not apply with respect to any National Forest System lands in Alaska.

Rationale: The 2007 Tongass Land Management plan made 676,000 acres available for harvest. Subsequent court decisions reinstating the Roadless Rule have removed 327,000 acres from that timber base. In addition to reducing possible timber sales, the rule increases time and costs for mining and hydroelectric projects in the Tongass National Forest. Unemployment in rural census areas of Southeast Alaska is upwards of 20 percent. This language re-establishes the multiple use principle on the national forests in Alaska to further employment in timber, mining and through making cheaper and renewable power available to communities.

6. Title: Eligibility for Other Federal Health Programs, Indian Health Affairs

Report Language Requested: It is the intent of the Committee that the determination of who is eligible as an Indian for the benefits and protections provided to Indians under sections 1311(c)(6)(D), 1402(d)(1) and (2), and 1501(b) of P.L. 111-148 should be consistent with other federal health programs and utilize the same definition of Indian that is used by the Centers for Medicare and Medicaid Services (as defined in section 447.51 of title 42 of the Code of Federal Regulations, as in effect on February 26, 2014). The Committee directs the Director of the Indian Health Service to work with the Department of Health and Human Services and the Internal Revenue Service to promulgate regulations in order to clarify this intent.

Rationale: This language will clarify it is the intent of Congress that the definition of Indian used by the Centers for Medicare and Medicaid Services applies to the Affordable Health Act to ensure eligibility of all impacted people.

7. Title: Integrated Resource Restoration

Program Description: Program provides for restoration of the National Forest System

Fiscal Year 2015 President's Budget Request: \$1.65 million

Additional Amount Requested: +\$12 million

Rationale: Additional funds will support the agency's forest products/timber sales program. The funding will allow the agency to follow through on commitments made to complete ten year sales which allow for regional development.

Budget Account: Department of Agriculture, Forest Service, National Forest System, Integrated Resource Restoration Program

8. Title: U.S. Geological Survey, National Geospatial Program within the Core Science Systems, Partnerships, and External Coordination, Mapping

Report Language Requested: Priority shall be given to strategic digital mapping initiative programs that receive matching funds from other federal agencies and or state governments. Priority should also be given to mapping programs with high concentrations of federal land ownership and the lowest quality elevation data.

Rationale: Only 20-25 percent of the United States' largest non-contiguous land mass has modern elevation level data. Lack of accurate elevation data is a safety hazard for general aviation and navigation and delays resource development activity in these areas. It is the basis of all modern digital mapping layers. In contrast, 35-40 percent of the Lower 48 states have modern LIDAR imagery and better quality data.

9. Title: Natural Hazards Program

Program Description: Volcano Monitoring

Fiscal Year 2015 President's Budget Request: \$128 million

Additional Amount Requested: +\$5 million.

Rationale: Sequestration has increased the already difficult challenges of reaching remote locations to repair and replace equipment for volcano monitoring. The President's Budget Request is not enough for the U.S. Geological Survey Group to make the necessary repairs, leaving commercial air traffic vulnerable.

Budget Account: Department of Interior, U.S. Geological Survey, Surveys/Investigations/Research, Natural Hazards

10. Title: Unalaska Hospital and Clinic

Program Description: The Bureau of Indian Affairs/Alaska Indian Service hospital built in 1933 in Unalaska was destroyed by the Japanese in June of 1942. On June 14, 1942, the residents of Atka Island (350 miles to the West of Unalaska) were forcibly evacuated from the island and the United States Navy burned the structures on the island to the ground, including its health clinic, to prevent its use by the Japanese.

In 1980, the United States Congress established a Commission on Wartime Relocation and Internment of Civilians pursuant to P.L. 96-317, 94 Stat. 964, to review the facts and actions taken under Executive Order 9066, to measure the impact of the Executive Order, to review the relocation and detention of the Aleuts, and to recommend appropriate remedies. After 20 days of hearings and testimony from over 750 witnesses, in December 1982 the Commission released its report, *Personal Justice Denied*. One of the key suggestions coming out of the Commission process was the recommendation of specific legislation aimed at Aleut restitution for losses suffered during this era. On August 10, 1988, Congress adopted the "Aleutian and Pribilof Islands Restitution Act," Public Law 100-383 ("the Restitution Act"). The Act is comprised of several elements, with specific creation of a broad fiduciary relationship between the federal government and the Aleut people, with authorized appropriations aimed at partial redress of community and individual losses, among other elements.

Bill Language Requested: Of the amount available in this Act \$100,400,000 may be made available for the design and construction of an inpatient hospital facility in Unalaska, and a health clinic in Atka.

Rationale: To date, no replacement hospital has been constructed or serves the Unalaska community, and the walk-in clinic that has been put together on Atka by the Aleutian Pribilof Islands Association (APIA) is not sufficient to meet island resident need. A compelling legislative case can be made for appropriations that would address the healthcare needs in the Aleutian region, including for a hospital in Unalaska and clinic on Atka, particularly given the history and legislation of the Restitution Act and the underlying trust responsibility.

11. Title: Staffing and Operating Costs for Healthcare Facilities

Program Description: Section 818(e) of P.L. 94-437 authorizes IHS to make arrangements with an Indian tribe to establish a joint venture project for the acquisition, including construction, of a health care facility. The Indian tribe will expend tribal funds, private sector funds, or other available non-IHS resources, including loan guarantees, for the acquisition, including construction, of a tribally-owned health care facility. In exchange, for a minimum of 20 years, IHS is to lease the health care facility and the land incidental thereto under a no-cost lease, and agree to provide the equipment, supplies, and staffing for the operation and maintenance of such a health facility.

Support Fiscal Year 2015 President's Budget Request: \$85.048 million

Bill Language Requested: The Indian Health Service shall provide a report to the Committee not later than 60 days after enactment of this act detailing how funds will be used to fulfill staffing obligations for prior years' joint venture partnerships.

Rationale: In FY 2015 four new facilities will need \$70,818,000 for staffing costs; prior year facilities still need funding to complete staffing packages for new or expanded facilities. This amount ensures that there are sufficient funds to cover both current and prior obligations and the language provides for congressional oversight of staffing for existing facilities.

Budget Account: Department of Health and Human Services, Indian Health Services, Staffing and Operating Costs for Healthcare Facilities

12. Title: Indian Health Services Contract Support Costs

Program Description: The Indian Health Service (IHS) Contract Support Costs (CSC) account supports federal government payments to tribes for certain administrative costs associated with executing tribal self-governance contracts and compacts under the *Indian Self Determination and Education Assistance Act* (ISDEAA), P.L. 93-638, that are not otherwise funded under the contract or compact. The Bureau of Indian Affairs is also required to pay CSC under ISDEAA. Payments are available for direct and indirect contract support costs. Indirect contract support costs are those incurred for a tribe's or tribal organization's common services, including, but not limited to, insurance and audits.

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Direct contract costs include program-specific costs such as unemployment taxes and workers compensation insurance. The account also supports the costs associated with executing or administering new and/or expanded self-determination contracts.

Support Fiscal Year 2015 President's Budget Request: \$617.205 million

Budget Account: Department of Health and Human Services, Indian Health Service, Contract Support Costs

13. Title: Bureau of Indian Affairs Contract Support Costs

Program Description: The Bureau of Indian Affairs (BIA) Contract Support Costs (CSC) account supports federal government payments to tribes for certain administrative costs associated with executing tribal self-governance contracts and compacts under the *Indian Self Determination and Education Assistance Act* (ISDEAA), P.L. 93-638, that are not otherwise funded under the contract or compact. BIA is also required to pay CSC under ISDEAA. Payments are available for direct and indirect contract support costs. Indirect contract support costs are those incurred for a tribe's or tribal organization's common services, including, but not limited to, insurance and audits. Direct contract costs include program-specific costs such as unemployment taxes and workers compensation insurance. The account also supports the costs associated with executing or administering new and/or expanded self-determination contracts.

Support Fiscal Year 2015 President's Budget Request: \$246 million

Budget Account: Department of Health and Human Services, Bureau of Indian Affairs, Contract Support Costs

14. Title: National Endowment for the Humanities

Program Description: The National Endowment for the Humanities (NEH) is an independent federal agency created in 1965. It is one of the largest funders of humanities programs in the United States. Because democracy demands wisdom, NEH serves and strengthens our republic by promoting excellence in the humanities and conveying the lessons of history to all Americans. The NEH accomplishes this mission by awarding grants for top-rated proposals examined by panels of independent, external reviewers

Support Fiscal Year 2015 President's Budget Request: \$146.021 million

Thank you for your consideration of these requests. Please do not hesitate to contact my staff member, Lindsay Kavanaugh, at (202) 224-1924 if additional information is required.

Sincerely,



Mark Begich
United States Senator

113TH CONGRESS
2D SESSION

S. _____

To direct the Secretary of the Interior to complete a supplemental environmental impact statement with respect to the Izembek National Wildlife Refuge land exchange, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. BEGICH introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To direct the Secretary of the Interior to complete a supplemental environmental impact statement with respect to the Izembek National Wildlife Refuge land exchange, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Izembek National
5 Wildlife Refuge Land Exchange Act of 2014”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) ASSISTANT SECRETARY.—The term “Assist-
2 ant Secretary” means the Assistant Secretary for
3 Indian Affairs.

4 (2) GENERAL TRUST RESPONSIBILITY.—The
5 term “general trust responsibility” means the re-
6 sponsibility of the United States to the health and
7 welfare of Indian tribes and members of Indian
8 tribes.

9 (3) INDIAN TRIBE.—The term “Indian tribe”
10 has the meaning given the term in section 102 of the
11 Federally Recognized Indian Tribe List Act of 1994
12 (25 U.S.C. 479a).

13 (4) LAND EXCHANGE.—The term “land ex-
14 change” means the Izembek National Wildlife Ref-
15 uge land exchange authorized under section 6402 of
16 the Omnibus Public Land Management Act of 2009
17 (16 U.S.C. 668dd note; 123 Stat. 1177).

18 (5) SECRETARY.—The term “Secretary” means
19 the Secretary of the Interior.

20 (6) SUPPLEMENTAL ENVIRONMENTAL IMPACT
21 STATEMENT.—The term “supplemental environ-
22 mental impact statement” means the supplemental
23 environmental impact statement completed under
24 section 3(a).

1 **SEC. 3. IZEMBEK NATIONAL WILDLIFE REFUGE LAND EX-**
2 **CHANGE.**

3 (a) SUPPLEMENTAL ENVIRONMENTAL IMPACT
4 STATEMENT.—Not later than 270 days after the date of
5 enactment of this Act, the Secretary shall complete a sup-
6 plemental environmental impact statement to the final en-
7 vironmental impact statement entitled “Final Environ-
8 mental Impact Statement; Izembek National Wildlife Ref-
9 uge Proposed Land Exchange/Road Corridor, Cold Bay,
10 AK” (78 Fed. Reg. 8577 (February 6, 2013)) that incor-
11 porates any findings of the Assistant Secretary relating
12 to the general trust responsibility with respect to the land
13 exchange.

14 (b) PUBLIC INTEREST FINDING; RECORD OF DECISION.—Not later than ¹⁸⁰~~90~~ days after the date of comple-
15 tion of the supplemental environmental impact statement,
16 the Secretary shall—

18 (1) in consultation with the Assistant Secretary,
19 issue a finding on whether the land exchange is in
20 the best interest of the public, after taking into ac-
21 count the findings in the supplemental environ-
22 mental impact statement; and

23 (2) issue a new record of decision to replace the
24 record of decision entitled “Record of Decision for
25 Final Environmental Impact Statement; Izembek
26 National Wildlife Refuge Proposed Land Exchange/

1 Road Corridor, Cold Bay, Alaska” (79 Fed. Reg.
2 9759 (February 20, 2014)) that takes into account
3 the findings in the supplemental environmental im-
4 pact statement.

5 (c) CONSULTATION REQUIRED.—In carrying out the
6 duties of the Assistant Secretary under this Act, the As-
7 sistant Secretary shall consult with Indian tribes affected
8 by the land exchange.

then, can you submit to me or to the committee, whatever would be the appropriate channel, but I would like to get a more definitive timetable of how you are going to settle these. Because my worry is that these will just go on and on and on. The Supreme Court has ruled, we know the amounts, or we know the potential aggregate.

Then I would like a comment at some point, not necessarily now but in writing, if you don't agree with the total aggregate in their shortfall reports, in other words, at the end of the day, if we settle with tribes and it is this much money based on those reports, then that should be easy. But if you are saying those may not be the right numbers, then we have to figure out why those reports are being submitted and what is the better way to approach this.

Because really, first off, we never want to see those reports, because you should be paying 100 percent. But I am a little perplexed by that. Because when we see those reports, we assume this is what is owed. But if you are saying that is not exactly right, there are some variances, then that makes me, especially as an appropriator, a little wondering what is going on there. So you have to help me there. You don't have to do it now, but if you can kind of think about that issue.

Then the last, and if this puts you on the spot you don't have to answer it. But I just want to follow up on what Senator Murkowski said, especially about King Cove. I sensed, the comment you made is if the Congress had defined the trust relationship differently, the outcome may have been different. What did you mean by that? And why I say that is because, did you have a different opinion on those conversations on King Cove? And if you don't want to answer, I understand. But I sense that there might have been some differences here, and if there is, what were they? Then second, what do we have to change to give you that authority if the outcome will be different. I think that is kind of the goal.

Mr. WASHBURN. Senator Murkowski met with me before I went to King Cove and very clearly asked me to look at sort of the trust responsibility implications of what we were doing, and her staff. We met with a lot of her staff and her staff were very thoughtful. So I looked at the statute, and it was part of an omnibus statute, this portion about Isenbeck and King Cove. The omnibus statute had several provisions. It was a big public lands act.

Senator BEGICH. Public lands went in 2009.

Mr. WASHBURN. That is right. And the trust responsibility was discussed in other places with regard to tribes. But the trust responsibility was not mentioned once with regard to the King Cove community at Isenbeck. It is Congress that first defines the trust responsibility. It is up to you, it is up to Congress to say what does the trust responsibility mean in any given context.

So that is what I found when I looked. When I looked at what does the trust responsibility mean here, I learned that we had no guidance from Congress whatsoever on that point. It is Congress' duty in the first instance to define the trust responsibility.

We certainly have a trust responsibility, too. Executive Branch bears that responsibility. But it is formally defined by Congress, and Congress has plenary authority over Indian Affairs. So if it is

defined by Congress, we have to follow that. It was utterly absent in that statute.

So I would invite you the next time, if you want to make sure you get this done, you talk specifically about the trust responsibility to King Cove. This is a difficult issue. There are strong feelings on both sides of it. The Secretary I don't think was happy to be in the position of having to make this very difficult decision, which places very important values against one another. And I am frankly sorry to have to be in a position to make decisions like that. These are the hardest decisions we make. Because they make a real difference in people's lives and lots of people care about them.

So that is what I was getting at.

Senator BEGICH. Thank you very much. And as always, you are great on testimony. Thank you for always coming to Alaska.

Mr. WASHBURN. Thank you.

The CHAIRWOMAN. Thank you, and again, Assistant Secretary Washburn, thank you for being here. I don't think that any of us conspired with our staff to make this all about contract support. I think it is just a natural continuation of our quest to make sure that this issue is rectified. Both of my colleagues, Senator Murkowski and Senator Begich, invited me to Alaska this summer and I went. I have to say that the Alaska Native Medical Center is a state of the art facility, not just in Indian Country, but in the entire United States. They deserve their contract support and they are leading the way, juxtaposed to an IHS-run facility that is not necessarily innovating, meeting the needs of the community. So those are the two paths and choices, move toward the kind of innovation that is being delivered in Indian Country and in self-governance. So we really have to rectify this issue.

But I just wanted you to know, I don't think we all conspired, it is just a natural outflow. This is part of this discussion of self-governance and it is the complaints and concerns that we have heard before. I am sure the next panel is going to tell us a lot about just the day to day details of the success of self-governance. But we have to get this larger issue out from hanging over the self-governance issue.

Again, thank you for being here.

Mr. WASHBURN. It is my honor. Thank you.

The CHAIRWOMAN. So we will hear now from our second panel of witnesses, as I have introduced them previously. We are so thankful for them being here.

Ron Allen from the Jamestown S'Klallam Tribe; the Honorable Ron Trahan from the Salish Kootenai Tribes of Montana; Jerry Isaac, from the Tanana Chiefs Conference of Fairbanks, Alaska; and Mr. Mickey Percy, Executive Director for Self-Governance for the Choctaw Nation.

We are going to start with you, Mr. Allen. Again, thank you for being here, thank you for your leadership on the self-governance issue overall.